

REMARKS/ARGUMENTS

This case has been carefully reviewed and analyzed in view of the Official Action dated 24 September 2004. Responsive to that Office Action, Claims 2 and 6 are canceled, and Claims 1 and 3-5 are amended for further prosecution. With such amendment of Claims, there is a further clarification of the pending Claims' recitations.

In the Office Action, the Examiner rejected Claims 1-6 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In response to this rejection, the appropriate Claims have been amended and now particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In the Official Action, the Examiner rejected Claims 1-4 under 35 U.S.C. § 102(b) as being anticipated by, or alternatively under 35 U.S.C. § 103(a) as being obvious over the Fischell, et al. Patent 6,112,116. The Examiner also rejected Claims 1-4 and 6 under 35 U.S.C. § 102(e) as being anticipated by the Fischell, et al. reference U.S. Patent 6,272,379. Additionally, the Examiner rejected Claims 1-4 under 35 U.S.C. § 102(e) as being anticipated by, or alternatively under 35 U.S.C. § 103(a) as being obvious over the Natarajan, et al. reference. The Examiner also rejected Claim 6 under 35 U.S.C. § 103(a) as being obvious over the Natarajan, et al. or Fischell, et al. reference in view of the Godfrey reference.

Additionally, the Examiner rejected Claims 1-4 and 6 under the judicially created doctrine of obvious-type double patenting as being unpatentable over Claims 1-41 over U.S. Patent 6,272,379 and Claims 1-50 of U.S. Patent 6,112,116. The Examiner, however, merely objected to Claim 5 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Accordingly, the patentable limitations of Claims 5 and 2 are now incorporated into independent Claim 1, with Claim 2 being canceled. Such Amendment of Claims is made in the interest of expediting prosecution of this case, given the Examiner's indication of allowable subject matter. Such amendment of Claims is made, moreover, without addressing the merits of the Examiner's rejections under 35 U.S.C. §§ 102 and 103.

It is now believed that Claims 1 and 3-5 are in allowable form. It is respectfully submitted, therefore, that the subject Patent Application has now been placed fully in condition for allowance, and such action is respectfully requested.

MR3065-26
Serial Number: 10/061,679
Reply to Office Action dated 24 September 2004

If there are any further fees associated with this filing, the Honorable Commissioner for Patents is hereby authorized to charge Deposit Account #18-2011 for such charges.

Respectfully submitted,
For: ROSENBERG, KLEIN & LEE

A handwritten signature in black ink, appearing to read 'Rajiv S. Shah', with a long horizontal flourish extending to the right.

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